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QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD

Report of the High Commissioner for Human Rights on the situation of human rights in East Timor

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I. INTRODUCTION

1. At the fifty-sixth session of the Commission on Human Rights, the Chairperson of the Commission issued a statement on the situation of human rights in East Timor, in which the High Commissioner was requested to submit an interim report to the General Assembly at its fifty-fifth session and to report to the Commission at its fifty-seventh session.

2. The High Commissioner submitted an interim report to the General Assembly at its fifty-fifth session (A/55/36), in which she noted that the Government of Indonesia had taken a number of concrete steps to investigate violations of human rights and international law and to bring those responsible to justice.

3. The present report is submitted pursuant to the request contained in the Chairperson's statement and provides information on developments since the issuance of the statement, in particular concerning the visit of the High Commissioner to East Timor, OHCHR technical cooperation with the United Nations Transitional Administration in East Timor (UNTAET) and activities undertaken by the Human Rights Unit of UNTAET.

II. ACTIVITIES OF OHCHR

A. Visit of the High Commissioner to East Timor

4. From 5 to 7 August 2000, the High Commissioner visited East Timor. During the visit, she met with a wide range of East Timorese and international personalities, including East Timorese political, religious and NGO leaders and senior representatives of the international community. The High Commissioner travelled to a number of locations in and around Dili, as well as Suai district, where she laid flowers at the site of a mass killing that took place in 1999, and delivered a keynote address at a workshop on human rights and the future of East Timor, held on 7 and 8 August 2000, in Dili.

5. The High Commissioner is particularly concerned about the unusually complex situation of the East Timorese refugees located in West Timor, the resolution of which requires engagement with a multiplicity of actors. The High Commissioner was also concerned to learn, during her visit to East Timor, of the number of missing East Timorese, presumed dead, whose fate is unknown.

6. Accordingly, in October 2000, the High Commissioner appointed a personal consultant for East Timor, Ms. Shanthi Dairiam, Director of the Malaysia-based International Women's Rights Action Watch (Asia Pacific). The personal consultant visited East Timor from 29 October to 15 November 2000 with a view to reporting to the High Commissioner on appropriate action to be taken by the High Commissioner to encourage the voluntary return of refugees to East Timor and on modalities for assisting in the establishment of a tracing commission for missing East Timorese persons. The visit was conducted in consultation with UNTAET and with the cooperation of relevant United Nations agencies, including the Office of the United Nations High Commissioner for Refugees (UNHCR), the United Nations Development Programme (UNDP), UNICEF, and other international organizations, including the International Committee of the Red Cross (ICRC) and the Asian Development Bank, and

local non-governmental organizations, including FOKUPERS, Yayasan Hak and the East Timor Human Rights Centre. The High Commissioner requested permission for the personal consultant to travel to West Timor to visit the refugee camps and to Jakarta to meet with government officials. This request was refused by the Indonesian authorities. The High Commissioner will keep the Commission updated on developments.

7. During the High Commissioner's visit to Indonesia from 22 to 23 November 2000, she met with representatives of the Government, including officials of the Ministry of Foreign Affairs and the Minister of Justice and Human Rights. The Attorney-General, Mr. Marzuki Darusman, informed the High Commissioner that the Indonesian House of Representatives (DPR) had adopted the Law on Human Rights Tribunals on 6 November 2000, pursuant to which ad hoc tribunals would be set up to hear cases relating to the East Timor-related human rights violations of 1999. (Earlier in the year, further to a request from the Attorney-General to the Secretary-General, OHCHR had provided technical advice on the draft law on human rights tribunals.) In this regard, the Attorney-General also informed the High Commissioner that indictments had been issued against 14 persons suspected of committing serious crimes during the violence in East Timor in 1999. The Attorney-General requested the High Commissioner to provide technical cooperation to his Office to support the investigation and prosecution of the human rights violations that took place in East Timor in 1999. The High Commissioner is waiting to receive formal confirmation from the Ministry of Foreign Affairs that this cooperation can proceed. If this is confirmed by the Government of Indonesia, it is intended that this cooperation will commence early in 2001.

B. OHCHR technical cooperation with UNTAET

8. The Office of the High Commissioner for Human Rights is currently finalizing a project of human rights technical cooperation with the Human Rights Unit of UNTAET for implementation in 2001. It is proposed that the project of technical cooperation will include:

(a) Human rights training to East Timorese and international Professional staff of the Human Rights Unit of UNTAET;

(b) Human rights training to the East Timorese police and the United Nations Civilian Police (CIVPOL); human rights training to East Timorese judges, prosecutors and public defenders;

(c) Promotion of human rights activities, including funding for the purchase, translation and dissemination of international human rights educational and training materials;

(d) Legal advice and assistance on particular issues, cases and draft legislation to ensure conformity with international human rights standards;

(e) Assistance with the establishment of a commission of truth, reception and reconciliation;

(f) Assistance with promoting ratification and adherence to the principal international human rights instruments.

OHCHR also provides substantive and administrative support to the Human Rights Unit, including dissemination of information on United Nations human rights machinery, advising on strategic planning, facilitation of the participation of representatives of UNTAET and East Timor in OHCHR regional activities and the recommendation of candidates for posts with the Human Rights Unit.

9. The Human Rights Unit of UNTAET participated in the meeting, organized by OHCHR, of the United Nations human rights field presences, held from 28 to 31 August 2000 in Geneva. Participants from field presences of OHCHR, the Department of Peace-keeping Operations and the Department of Political Affairs discussed the current and future role of United Nations human rights field presences. OHCHR invited the Chief of the Human Rights Unit, Mr. Patrick Burgess, to visit Geneva from 23 to 26 October 2000 for a briefing on the work of OHCHR and the United Nations human rights machinery. The Chief of the Human Rights Unit met with, inter alia, the Chiefs of the Activities and Programmes Branch and the Research and Right to Development Branch, and representatives of the Support Services Branch, Special Procedures, the Voluntary Fund for Technical Cooperation and the geographic teams.

III. ACTIVITIES OF THE HUMAN RIGHTS UNIT OF UNTAET

10. The information in this section has been provided by the Human Rights Unit of UNTAET.

A. Status of investigations and proposed prosecutions

11. As at 14 December 2000, 49 suspects are in pre-trial detention on suspicion of having committed serious crimes during 1999. The Serious Crimes Investigations Unit has reported that investigations into the following cases are being finalized:

(a) The attack on the Liquica Church compound on 6 April 1999;

(b) The attack on the house of Manuel Carrascalao on 17 April 1999;

(c) The attack on the Maliana police station compound on 8 September 1999;

(d) A series of killings from April to September 1999 in Los Palos, including of members of the clergy in September 1999, and the forcible transfer of the population;

(e) Gender related crimes involving arbitrary arrest, unlawful detention and sexual violence committed in Lolotoe, Bobonaro district, from May to September 1999.

12. As at 14 December 2000, 11 indictments have been issued in relation to the murder of nine persons in Los Palos in September 1999. More indictments are currently being drafted and are expected to be issued early in 2001. Trials before the Special Panel for Serious Crimes are expected to commence early in 2001. The Special Panel will be composed of both East Timorese and international judges.

13. A serious lack of resources, both human and material, has hampered the investigative work of the Serious Crimes Investigation Unit. This has prevented investigations being undertaken in connection with the overwhelming majority of crimes against humanity and war crimes committed during 1999. Because of the delay in or non-existence of investigations, a number of detainees, who had been held for months in pre-trial detention, have been released by the General Prosecutor on grounds of insufficient evidence.

14. The Human Rights Unit is working to ensure that there is no impunity for past serious crimes and is providing the Serious Crimes Investigation Unit with information on human rights violations that took place in the context of the popular consultation in 1999.

B. The truth and reconciliation process

15. Preparatory work to establish a commission for truth, reception and reconciliation is ongoing. This commission will not deal with serious crimes as defined in the UNTAET rules of criminal procedure, including murder, rape, war crimes and crimes against humanity, which occurred between January 1999 and 25 October 1999. These crimes are being prosecuted through the Serious Crimes Investigation Unit.

16. The Human Rights Unit is working with a steering committee made up of broad representation of the East Timorese community, and relevant UNTAET units and United Nations agencies to design the structure of the commission and to draft regulations. The Human Rights Unit has also worked closely with two international experts on the truth and reconciliation process in order to ensure that the East Timorese process has the opportunity to benefit from similar experiences. On 13 December 2000, the East Timorese Cabinet (composed of East Timorese and international representatives) adopted a proposal on the broad design of the commission. This proposal will now be brought to the National Commission, as well as to community representatives and NGOs, who will then vote on whether to adopt the proposal to establish the commission.

17. It is currently proposed that the commission will have two main functions: to seek the truth regarding the pattern and scope of human rights violations in the past; and to facilitate community acceptance of those who committed lesser crimes. In order to undertake the first task, the commission may organize public hearings at which victims speak of their experiences or may organize investigations to discover the truth about the violations in the past. In order to undertake the second task, the commission will develop a mechanism for community-based reconciliation, involving perpetrators of less serious crimes, who must be willing to confess and apologize for what they did, and agree to community service.

C. Capacity building

18. The Human Rights Unit is involved in ensuring that institutions developed in the transitional period leading towards a future independent East Timor are based on and ensure respect for human rights principles and standards. In this regard, the Human Rights Unit is involved in the development of the political institutions, the constitutional process, the institutions to protect human rights and an independent and strong civil society.

19. The Human Rights Unit and the East Timorese Jurists' Association held a human rights workshop from 7 to 8 August 2000 during the visit of the High Commissioner. Representatives of the National Council of Timorese Resistance (CNRT), political parties, the churches and human rights organizations, including district human rights organizations, attended the workshop. It resulted in a series of recommendations concerning the development of a human rights culture in East Timor and institutions to protect human rights. The recommendations were adopted unanimously by the CNRT Congress, in the form of a resolution, and have been disseminated broadly among NGOs, political parties and other relevant interlocutors.

1. The judicial system

20. Four district courts have been established, in Dili, Baucau, Oecussi and Suai districts. Nine judges have been appointed for Dili court, nine judges for Baucau court, one judge for Oecussi court and four judges for Suai court. Cases have, to date, been heard in Dili, Baucau and Oecussi courts. An appeals court, with one judge, has been established but it is yet to hear any cases. There is one Deputy General Prosecutor, five prosecutors for Dili court, three prosecutors for Baucau court, one prosecutor for Oecussi court and two prosecutors for Suai court. Nine public defenders serve the whole of East Timor.

21. Training of the judiciary is now under way. The Human Rights Unit is currently liaising with the Judicial Affairs Unit to ensure that the judiciary, including public defenders and prosecutors, receive appropriate human rights training.

22. There have been a number of problems relating to the limited material and human resources available to the new judiciary. These problems have been acknowledged by UNTAET and are in the process of being addressed. The Human Rights Unit remains concerned that the lack of resources has resulted in a delay in hearing cases, thus endangering the right to fair trial.

2. Pre-trial and detention

23. The Human Rights Unit, in particular through the district human rights officers, has monitored the progress of cases before the judiciary and has consulted with the Judicial Affairs Unit on ways to address problems that have emerged. The handling of juvenile offenders appears to have improved: where before the judiciary tended not to consider alternatives to pre-trial detention for juvenile offenders, this is now being addressed and juvenile offenders are increasingly being conditionally released. The Human Rights Unit has also monitored the provision of legal counsel to detainees and consulted with the Judicial Affairs Unit to ensure that, in each case, detainees are provided promptly with legal advice. The Human Rights Unit remains concerned that because of a lack of resources, there are limited safeguards for detainees, in particular immediately following arrest, given the limited number of public defenders.

24. Prisons are operating in Dili, Baucau and Ermera districts. The Human Rights Unit regularly visits Dili prison and is working with the Judicial Affairs Unit of UNTAET to develop a training programme for prison officials. There are currently believed to be three prisoners serving sentences. The remaining detainees are in pre-trial detention, approximately 100 in Dili, 9 in Baucau and 54 in Ermera.

3. The legislative process

25. The Human Rights Unit participates in the Legislation Committee of the Cabinet, which advises the Cabinet on the drafting of legislation and works to ensure that legislation adopted is in accordance with international human rights standards.

26. The Human Rights Unit has provided commentary on a number of regulations which affect human rights. Relevant regulations adopted are the Regulation on the Organization of the Courts of East Timor, the Amending Regulation on the Organization of the Courts of East Timor, the Regulation on the Establishment of Panels with Exclusive Jurisdiction over Serious Criminal Offences, the Regulation on the Organization of the Public Prosecution Service in East Timor, and the Rules of Criminal Procedure.

27. Other regulations which are yet to be adopted but which have been or are being commented upon include a draft regulation establishing an office of the Ombudsperson, a draft regulation on the registration of political parties in East Timor, a draft regulation on penal institutions, a draft regulation on the establishment of the Timor Lorosa'e police service, a draft regulation on employment standards and labour regulation, and a draft regulation on the establishment of a truth, reconciliation and reception commission.

28. UNTAET is planning to adopt regulations on the establishment of a defence force for East Timor, a law reform commission, a legal aid service and the administration of juvenile justice, and a press law.

4. Civil society

29. The Human Rights Unit has conducted a number of activities to support the strengthening of civil society, in particular human rights organizations. These activities include providing human rights training for emerging community-based groups and NGOs working on human rights, establishing a human rights library, developing a proposal to fund small-scale initiatives to promote human rights, in cooperation with the NGO Yayasan HAK, and assistance to, for instance, the ex-political prisoners association (comprised of more than 2,000 ex-political prisoners) to develop its programme.

30. The Human Rights Unit is also working with NGOs to improve consultation with representatives of civil society for policy decisions and legislative development, including through the development of a formal mechanism for early and comprehensive consultation throughout the decision-making process.

31. The Human Rights Unit provided support for the steering and organizing committee of the National Women's Congress, which was held from 14 to 17 June 2000 in Dili. The Congress was attended by more than 300 women from the 13 districts, and followed the holding of regional pre-congress preparatory meetings to finalize the agenda. The Human Rights Unit assisted in designing the methodology for the 10 sectoral workshops and assisted in the formulation of the issues and recommendations resulting from the workshops. The

recommendations of the Congress were particularly important as they were then channelled to the CNRT Congress, held later in the year, and have also been brought to the attention of relevant UNTAET departments.

32. The Human Rights Unit is continuing its programme of human rights education in Dili and the districts. Throughout the year, two-day human rights training workshops have been conducted in a number of districts, targeting human rights workers, community leaders, CNRT, women's organizations, youth groups and new police recruits. The workshops, organized jointly with East Timorese human rights NGOs, have covered an introduction to human rights, justice, reconciliation, dealing with trauma, and women's rights. Workshops have been held in Oecussi, Ermera, Alieu, Suai, Liquica and Manatuto districts and Atauro Island, Dili district. The Human Rights Unit, and in particular the district human rights officers, have provided ongoing support to newly emerging human rights organizations in the districts. Follow-up training, assistance in fund-raising, provision of resources and developing human rights programmes have been offered by the district human rights officers.

33. The Human Rights Unit facilitates regular meetings between East Timorese and international NGOs. From February 2000, fortnightly human rights coordination meetings have been held to discuss human rights issues of concern. The Human Rights Unit continues its involvement in the Children's Rights Working Group, established by the Unit and now facilitated by UNICEF and international and East Timorese NGOs. The Human Rights Unit provided assistance to a two-day workshop on children's rights, held in December 2000.

34. Together with East Timorese NGOs, the Human Rights Unit was active in organizing events to celebrate international Human Rights Day, on 10 December 2000. A number of public education activities were organized in Dili and in the districts, including human rights education in schools, video screenings of human rights films, radio interviews and debates, community mural painting and human rights concerts. In Dili, a seminar was held on 6 December 2000 on the theme of "Human rights and reconciliation" involving approximately 200 young people and speakers, including the CNRT President, Mr. Xanana Gusmao, Bishop Belo, and representatives of civil society. A public Human Rights Day "fair" was held in Dili on 10 December 2000, involving a poster and poetry competition for children, human rights information and music. The Human Rights Unit produced a poster for Human Rights Day, translated into four languages, which highlighted article 1 of the Universal Declaration of Human Rights.

35. Key human rights instruments, including the Universal Declaration of Human Rights, the Convention on the Rights of the Child, the Convention on the Elimination of All Forms of Discrimination against Women and the Declaration on the Rights of Disabled Persons, have been translated into Tetum by UNICEF and the Human Rights Unit. The Human Rights Unit has widely disseminated these standards in Tetum, Portuguese, Bahasa Indonesia and English.

36. The Human Rights Unit is planning a series of human rights training workshops for early 2001, including human rights training for teachers, journalists and human rights workers. The Human Rights Unit is also preparing material focusing on those human rights fundamental to democracy, including freedom of expression and opinion, that will be used in human rights educational and promotional work in the lead up to the elections for a constituent assembly.

D. The protection of ethnic and religious minorities and other vulnerable groups

37. The Human Rights Unit, through its office in Dili and its district human rights officers, addresses the need for protection of particular vulnerable groups, the security of East Timorese refugees returning from West Timor and violence against women.

1. The protection of ethnic and religious minorities

38. Members of ethnic and religious minorities have reportedly been attacked, including harassment and physical assault, often because of their perceived links with Indonesia or pro-autonomy groups. In June 2000, three Protestant churches in Alieu district were burnt down because of allegations that the Church had connections with militia groups. There are approximately 240 members of the Muslim community living in the confines of the Dili mosque because of fears for their security if they return to their homes in Dili district. None of the group has successfully returned to their homes in Dili. In May 2000, the Human Rights Unit facilitated negotiations between some families living in the mosque and village leaders in order to arrange for the families to return to their homes. The negotiations failed, however, because the village leaders and village CNRT representatives claimed that, as the community was not ready to accept the return of the families, their security could not be guaranteed. The Human Rights Unit intends to renegotiate the return of members of the community to their homes, a situation now further complicated as their homes are illegally occupied. The Human Rights Unit will conduct a survey early in 2001 on the situation of ethnic and religious minorities in Dili district, where most of the ethnic and religious minorities live.

2. East Timorese refugees

39. There are between 80,000 and 100,000 East Timorese refugees located in West Timor. Following the evacuation of international humanitarian workers from West Timor after the 6 September 2000 killing of three UNHCHR staff in Atambua, West Timor, the Human Rights Unit continues to monitor the situation of the East Timorese refugees in West Timor, through NGO networks, media monitoring and cooperation with UNHCR.

40. The Human Rights Unit and, in particular, its district human rights officers deployed in the 13 districts of East Timor have played an active role both in preparations for the return of the East Timorese refugees from West Timor, including negotiations prior to return concerning their reintegration, and in the subsequent monitoring of the returnees' security. While the number of incidents of violence against returnees has been relatively low, there continue to be reports of incidents where returnees suspected of supporting pro-autonomy groups or participating in violent crimes during 1999 have been intimidated, threatened, kidnapped, arbitrarily detained and beaten.

3. Human rights violations against women

41. With technical assistance from the Jesuit Relief Services (JRS), the Human Rights Unit has developed a database (in English and Bahasa Indonesia) on gender-based violations, for use by local NGOs. FOKUPERS, a leading women's NGO, has been able to enter its data from

interviews with over 200 women witnesses into the database. The Human Rights Unit is working together with FOKUPERS and a number of self-help groups in Bobanaro and Covalima districts on a video documentation project to produce a short video on gender-based violence, including the violence in 1999 and, also, contemporary cases.

42. The Human Rights Unit is working on a number of gender-related issues, including providing support to women who were victims of human rights violations in organizing themselves into self-help groups so as to be better able to meet their requirements. These organizations have addressed economic needs and assisted in advocacy skills building relating to past human rights violations. Organizations which have benefited from the support of the Human Rights Unit include Materestu in Covalima district, Nove-nove in Maliana and Moris Foun, both in Bobonaro district, and Ratelaek in Liquica district.

43. There are at least 60 documented cases of rape which took place in 1999. Following the delay in investigating these cases, the Human Rights Unit is cooperating with local NGOs and the Civilian Police component of UNTAET to facilitate these investigations. It is hoped that more resources will be allocated to these investigations in the future

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